



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Yvette Marie Gordon, et al. Art Unit : 2611
Serial No. : 09/293,011 Examiner : Vivek Srivastava
Filed : April 16, 1999
Title : TRANSMITTING VIEWABLE DATA OBJECTS

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST TO RESCIND NOTICE OF NON-COMPLIANT AMENDMENT

Examiner has submitted a Notice of Non-Compliant Amendment dated March 5, 2004. Examiner contends that claims amended in a Reply to Office Action filed February 25, 2004 do not comply with the requirements of 37 CFR 1.121. Examiner argues claims lack proper status identifiers. Examiner further argues claims 27-32 were canceled. A copy of the Notice of Non-Compliant Amendment is enclosed.

Applicant disagrees. In the reply filed February 23, 2004, all claims include their proper identifiers. Claims 27-32 are not canceled; they are identified as "previously presented" and are discussed under "Remarks:"

With regard to claims 27-32, which depend on claim 70, the Examiner indicated that those claims are rejected but has not supplied any basis for rejection. Accordingly, Applicant is unable to specifically respond to the rejection of those claims, other than to point out that since those claims depend on claim 70, they include all limitations of claim 70 and are patentable for at least the same reasons (p. 18, last paragraph).

Applicant filed this reply in response to the Office Action dated November 21, 2003. A copy of this reply is enclosed.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

3/16/04
Date of Deposit

Signature

Kjia Lakemboch
Typed or Printed Name of Person Signing Certificate

Applicant : Yvette Marie Gordon, et al.
Serial No. : 09/293,011
Filed : April 16, 1999
Page : 2 of 2


Attorney's Docket No.: 07442-009001

Furthermore, in his action of November 21, 2003, Examiner indicates that claims 27-32 are pending. He rejects these claims but does not supply a reason for rejection. Applicant inferred these claims were rejected for the same reason as claim 70, the independent claim on which they depend. Examiner rejected claim 70 as being anticipated by Burns et al. (U.S. 5,991,306). A copy of this action is also enclosed.

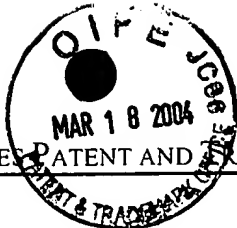
Claims 27-32 were therefore neither misidentified nor canceled. Applicant requests Examiner to rescind the notice. No fee is believed due. However, please adjust deposit account 06-1050, reference 07442-009001 if necessary.

Respectfully submitted,

Date: 3/16/04


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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/293,011	04/16/1999	YVETTE MARIE GORDON	07442009001	4298

26161 7590 03/05/2004

FISH & RICHARDSON PC
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EXAMINER

SRIVASTAVA, VIVEK

ART UNIT

PAPER NUMBER

2611

DATE MAILED: 03/05/2004

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DAVID FEIGENBAUM FISH & RICHARDSON, PC.
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Docketed By	Practice Systems
Action Code:	RESP-1MO
Base Date:	3-5-04
Due Date:	4-5-04
Deadline:	4-5-04
Initials:	JMG
Record:	

Docketed By	Training Systems
Due Date:	
Deadline:	4-5-04
Initials:	R/a



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Paper No. 25

Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 2/25/04 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121, as amended on June 30, 2003 (see *68 Fed. Reg. 38611*, Jun. 30, 2003). In order for the amendment document to be compliant, correction of the following item(s) is required. **Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted.** 37 CFR 1.121(h).

THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____
- ☐ 3. Amendments to the drawings: _____
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all claims (including withdrawn claims)
 - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified.
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: Claims 27-32 were canceled in Amendment C.

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For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officflyer.pdf>.

If the non-compliant amendment is a **PRELIMINARY AMENDMENT**, applicant is given **ONE MONTH** from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 132, and **this ONE MONTH time limit is not extendable.**

If the non-compliant amendment is a reply to a **NON-FINAL OFFICE ACTION** (including a submission for an RCE), and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(c)), applicant is given a **TIME PERIOD** of **ONE MONTH** from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).**

If the amendment is a reply to a **FINAL REJECTION**, this form may be an attachment to an Advisory Action. The period for response to a final rejection continues to run from the date set in the final rejection, and is not affected by the non-compliant status of the amendment.

Wanda M. Dawson
Legal Instruments Examiner (LIE)

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/293,011	04/16/1999	YVETTE MARIE GORDON	07442009001	4298

26161 7590 11/21/2003

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NOV 25 2003 *Rja*
DAVID FEIGENBAUM

EXAMINER

SRIVASTAVA, VIVEK

ART UNIT PAPER NUMBER

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DATE MAILED: 11/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Docketed By	Practice Systems
Action Code:	<i>Resp to OA</i>
Base Date:	<i>11.21.03</i>
Due Date:	<i>2.21.04</i>
Deadline:	<i>5.21.04</i>
Initial:	<i>~~~~~</i>

Docketed By	Billing Secretary
Due Date:	_____
Deadline:	<i>2.21.04</i>
Initial:	<i>Rja</i>

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NOV 24 2003

FISH & RICHARDSON, P.C.
BOSTON OFFICE

KS

Office Action Summary



Application No.

09/293,011

Applicant(s)

GORDON ET AL.

Examiner

Vivek Srivastava

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 7, 9, 11, 22 and 27-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7, 9, 11, 22 and 27-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 70 is rejected under 35 U.S.C. 102(e) as being anticipated by Burns et al (5,991,306).

Considering claim 70, Burns discloses a method of distributing viewable data objects to viewer receivers. In particular, Burns discloses cache server 72 and continuous media server 74 which are both accessible by subscriber PC's 58 and 60 (see fig 2). It should be noted that since both subscriber PC's can select viewable objects, Burns discloses the claimed "selecting a first viewable object from a pool of viewable data objects in response to a first predetermined event" and "selecting a

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second viewable object from the pool in response to a second preselected event".

Burns further discloses "the data comprising the target resource is stored in a proxy file in the cache memory 124, and any continuous data content (e.g., audio or video data) is stored in the continuous media server 126". It should be noted that the target resource would be inherently given a higher priority to be stored in the cache memory. Further, since both subscriber PC's can view data object from either server, Burns discloses the claimed "sending the first viewable object from the first local server to a first viewer receiver; and sending the second viewable data object from the second local server to a second viewer receiver".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7, 9, 11, 33-36, 38-40, 42-44, 49-52, 54-57, 59-63, 67-69, 71 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns et al (5,911,306) in view of Kindell et al (5,630,067).

As to claim 1, note the Burns et al reference which discloses a pull-based, intelligent caching system for a network system. Content service providers are connected to local service providers via an interactive distribution network. The local

service providers facilitate the delivery of the content from the content provider to multiple subscribers. The local service providers schedule the delivery of frequently requested content from the content provider prior to a peak time when the subscribers are likely to request content. The content is downloaded during off-peak hours and cached at the local service providers for serving to the subscribers during the ensuing peak time. In this manner, the frequently requested content is already present at the local service providers and ready to be served to the subscribers when they actually request it. When the content is finally requested, the data is streamed continuously in a real-time manner for just-in-time rendering at the subscriber computer. Note Figure 2 and the associated disclosure. The claimed plurality of local servers...is met by the local service providers, the ISPs 56, and the claimed at least one storage server...is met by the content server 52. The reference further discloses that the ISP's 56 include continuous media servers (CMSs) 74 which provide continuous media streams, such as audio and video data using a disk array data storage system having associated therewith a memory map storing the locations of, or pointers to, particular audio and video data streams, col 6 lines 66+. In operation, a requested video stream is retrieved by a processor using the associated pointer, and the stream is provided to the subscriber over communications lines 66, 68. This processor is naturally in communication with the content server 52 (via the cache server 72, Fig 2) in order to download audio and video data to the disk array data storage system for continuous media applications.

Burns fails to disclose the claimed content manager separate from first and second local servers. Kindell discloses a manager, which is separate from a remote server and a local server, which retrieves a user's request (see col 6 lines 45-63). It would have been obvious modifying Burns to include a manager separate from the

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servers would have enabled easier maintenance since the components would have been separate and would have also insured uninterrupted service since the manager could communicate with another server in case a given server is non-functional.

As to claim 3, the reference discloses subscriber PCS 58 and 60. The reference also discloses an alternative cable television environment consisting of cable headend servers, cable headends, and cable networks, in which television receivers are inherent.

As to claim 4, the ISPs 56 have servers which are designed to cache and serve the most frequently requested continuous data streams, such as video and audio data streams, and employ a disk array data storage system of finite capacity. Consequently, priority storage is considered inherent for data considered most 'frequently requested'.

As to claim 6, as noted above, the processor associated with the CMS 74 of the ISP 56 accesses a memory map which defines the logical locations of segments of audio or video streams which are stored across the disk array.

As to claims 9 and 11, the disclosed system is clearly an interactive, two-way, on-demand video system which dynamically provides access to video streams at the request of subscribers.

As to claim 34-36, 2, 38-40, 42 and 43, as noted above for claim 4, the reference clearly indicates that the most frequently requested content, whether that be Web pages or continuous media, is intelligently pre-cached in order to avoid latency problems. Frequently requested content is statistically identified and downloaded at off-peak hours, and stored at the CMS 74 accordingly. The 'alterable property' associated with the continuous media is the desirability of the media as defined by the frequency with which it is requested.

As to claim 44, the above-noted processor associated with the CMS 74 is, as indicated, in communication with the processor of the content server 52 for the purpose

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of coordinating the caching or downloading of continuous media. It can therefore be said that the flow of content is managed in a distributed fashion.

Claims 7, 33, 49-52, 54-57, 59-63, 67-69 and 71 are met by that discussed above.

Regarding claim 72, the combination of Burns and Kindell fails to disclose the claimed wherein the content manager is in communication with one of said first and second local servers by way of the storage server.

It would have been obvious to one skilled in the art to modify the combination of Burns and Kindell to include the claimed limitation to quickly check to see if the content requested has been previously sent from the storage server to the local server or in case it has not been sent, to send the content from the storage server to the local server to ensure the user gets the content requested

As to claims 37, 45 and 53, the reference discloses the collection of viewer statistics at individual ISPs 56 for caching purposes, and points to changes in taste based on changes in demographics and geographical regions. However, such centralized statistical collection and programming control is well-known in the cable television art when one is concerned with the programming for a collection of cable television headends. The advantage for centralizing control over priority designations for continuous media selections is that such processing is otherwise not required at the disparate headends. Further, continuous media, as opposed to Web page media, is often uniformly liked over broad regions, and consequently lends itself to the arrangement. Therefore, the Examiner submits that it would have been clearly obvious to one of ordinary skill in the art at the time of the invention to modify the Burns et al system to attach a priority to continuous media based on the statistical analysis of several ISPs/headends for the stated advantage.

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As to claim 41 and 58, it can be said that the popularity of a given continuous media presentation dictates the revenue projections that headend providers would attach to the media. Assuming arguendo, it is well-known in the cable television art to cache new releases for video-on-demand purposes and to attach a higher service charge to such presentations for the purpose of capitalizing on new media. It would have been clearly obvious to one of ordinary skill in the art at the time of the invention to modify the Burns et al system accordingly for the stated advantage.

As to claims 46-48 and 64-66, the Burns et al reference is silent as to a streaming control process, yet such control is notoriously well-known in the art of video-on-demand as a mechanism for imparting VCR-like control, such as pause, fast-forward, and reverse, to the client server environment. It would have been clearly obvious to one of ordinary skill in the art at the time of the invention to modify the Burns et al system with such video stream control to make the presentation of continuous media more desirable to the user.

Conclusion

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for formal communications intended for entry)

Or:

Art Unit: 2611

(703) 308- 5399 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

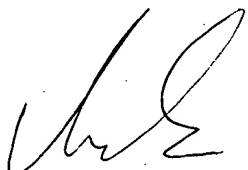
Hand-delivered responses should be brought to Crystal Park II, 2121
Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Vivek Srivastava whose telephone number is (703) 305
- 4038. The examiner can normally be reached on Monday - Thursday from 8:00 am to
5:30 pm.

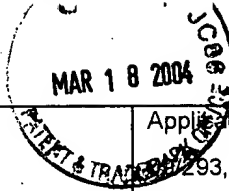
If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Andy Faile, can be reached at (703) 305 - 4380.

Any inquiry of a general nature or relating to the status of this application or
proceeding should be directed to the group receptionist whose telephone number is
(703) 305 - 3900.

VS/18/03



VIVEK SRIVASTAVA
PRIMARY EXAMINER



Notice of References Cited

Application/Control No.

293,011

Applicant(s)/Patent Under
Reexamination
GORDON ET AL.

Examiner

Vivek Srivastava

Art Unit

2611

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,630,067	05-1997	Kindell et al	709/231
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
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	M	US-			

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FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.